

## Message Text

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ORIGIN STR-04

INFO OCT-01 EUR-12 IO-13 ISO-00 STRE-00 COME-00 TRSE-00  
LAB-04 AGRE-00 EB-07 L-03 ITC-01 H-01 CIAE-00  
INR-07 NSAE-00 INRE-00 /053 R

DRAFTED BY STR:SCOFFIELD:JT 5/9/77 395-5081  
APPROVED BY STR:JSTARKEY  
COMMERCE:RSUPPE-BLANEY  
STATE:RMEYER  
TREASURY:BBARREDA  
LABOR:DWANAMAKER  
USDA:RSCHROETER

-----092356Z 104347 /66

O 092236Z MAY 77  
FM SECSTATE WASHDC  
TO USDEL MTN GENEVA IMMEDIATE  
INFO AMEMBASSY BRUSSELS IMMEDIATE

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E.O. 11652: N/A

TAGS:ETRD;EAGR

SUBJECT: U.S. RESPONSE TO EC SUBMISSION ON NFDM

1. THIS IS IN RESPONSE TO THE SUBMISSION OF THE EC TO THE GATT PANEL ON NFDM OF MARCH 28, 1977. THIS PAPER IS DESIGNED TO FURTHER CLARIFY AND EXPAND U.S. ARGUMENTS ON CERTAIN SPECIFIC POINTS RAISED BY THE EC SUBMISSION. IN VIEW OF THE EXTENSIVE DISCUSSIONS WHICH HAVE ALREADY BEEN HELD WITH RESPECT TO THE U.S. COMPLAINT ON THE EC'S NFDM MIXING SCHEME, THIS PAPER DOES NOT ATTEMPT TO PROVIDE DETAILED ANSWERS TO ALL POINTS IN THE EC BRIEF. THESE HAVE BEEN ALREADY ADEQUATELY TREATED IN PREVIOUS U.S.

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SUBMISSIONS. IT DOES HOWEVER SERVE TO FOCUS THE PANELS ATTENTION ON THE MAIN ISSUE WHICH IS THE INCONSISTENCY OF THE EC MIXING REGULATION WITH THE GATT.

2. ARTICLE III(5) SPECIFICALLY REFERS TO AND PROHIBITS MIXING REGULATIONS (I.E. REGULATIONS RELATING TO THE MIXTURE, PROCESSING OR USE) WHICH HAVE THE EFFECT OF

DISCRIMINATING AGAINST IMPORTS BY REQUIRING THAT A SPECIFIED PORTION OF ANY PRODUCT SUBJECT TO THE REGULATION BE SUPPLIED FROM DOMESTIC SOURCES. ARTICLE III(5) REITERATES THAT SUCH REGULATIONS MUST ALSO NOT BE APPLIED TO PROTECT

DOMESTIC PRODUCTION BY ITS REFERENCE TO THE FACT THAT THE REGULATION CANNOT BE CONTRARY TO ARTICLE III(1). THESE ARE TWO SEPARATE AND SPECIFIC PROHIBITIONS ON THE USE OF A MIXING REGULATION AND ARE BOTH INDEPENDENT OF EACH OTHER.

3. CLEARLY, THE OVERALL SPECIFIC AND IMPLICIT INTENT OF ARTICLE III IS TO PROHIBIT THOSE INTERNAL REQUIREMENTS WHICH WORK TO RESTRICT, DISCRIMINATE AGAINST OR OTHERWISE ADVERSELY AFFECT IMPORTS BY GIVING FAVORED TREATMENT TO DOMESTIC PRODUCTS. IN THE CASE OF MIXING REGULATIONS, THE OBLIGATION TO PROVIDE NON-DISCRIMINATORY TREATMENT FOR IMPORTS IS REINFORCED BY THE LANGUAGE IN THE EXEMPTION IN ARTICLE III(6) FOR MIXING SCHEMES ALREADY IN EFFECT. THIS LANGUAGE FURTHER SUPPORTS THE CASE FOR EQUITABLE TREATMENT FOR IMPORTS.

4. THE EC SCHEME SPECIFICALLY REQUIRES BY REGULATION THAT A CERTAIN SPECIFIED AMOUNT OF DOMESTIC NFDM BE PURCHASED FOR THE STATED PURPOSE OF MIXING IN LIVESTOCK FEED. AS INDICATED IN PREVIOUS SUBMISSIONS, THE U.S. BELIEVES THAT SUCH A REQUIREMENT, ENFORCED BY STRINGENT ADMINISTRATIVE CONTROLS AND SIGNIFICANT PENALTIES FOR NON-COMPLIANCE, IS IN CLEAR VIOLATION OF ARTICLE III(5).

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5. THE EC'S ARGUMENT WITH RESPECT TO ARTICLE II IS NEITHER RELEVANT NOR VALID. WHETHER OR NOT THE IMPORT DEPOSIT CHARGE WAS AN ALTERNATIVE TO ANOTHER ACTION WHICH ALSO VIOLATED THE GATT DOES NOT ALTER THE LEGALITY OF THE ACTION THAT WAS TAKEN. THE ADDITIONAL CHARGE THAT WAS IMPOSED ON THE IMPORT WAS IN EXCESS OF THE GATT-BOUND TARIFF RATE. EVEN IN THE ABSENCE OF THE FORFEITURE CHARGE, THERE ARE CHARGES, NOT ASSOCIATED WITH NORMAL CUSTOMS ADMINISTRATION, WHICH MUST BE PAID IN ORDER TO IMPORT THE BOUND PRODUCT.

6. THE EC RESPONSE TO THE U.S. BRIEF ITSELF APPEARS TO ADMIT THAT THE PURPOSE OF THE CHARGE IS TO INCREASE COSTS OF CERTAIN PROTEIN-SUBSTITUTES VIS-A VIS NFDM. SUCH A CHARGE CANNOT PROPERLY BE CONSIDERED AN INTERNAL TAX OR ITS EQUIVALENT. SUCH AN INTERPRETATION CANNOT BE SUSTAINED BY THE PANEL, BECAUSE ANY INTERNAL CHARGE ON AN IMPORT COULD THEN BE SO CAMOUFLAGED TO CIRCUMVENT THE PROHIBITIONS IN ARTICLE II. THE EC CHARGES ON IMPORTS ARE IN EXCESS

OF THOSE APPLIED TO DOMESTIC PRODUCTS, WERE NOT CHARACTER-  
ISTIC OF AN INTERNAL TAX, AND ARE ADMITTEDLY CHARGED FOR  
PURPOSES TOTALLY UNRELATED TO AN INTERNAL TAX OR ITS  
EQUIVALENT, AS THE U.S. HAS DEMONSTRATED IN EARLIER  
SUBMISSIONS.

6. AS REGARDS OTHER CONTENTIONS SET FORTH IN THE SUB-  
MISSION OF THE EC TO PANEL OF MARCH 28, 1977, THE U.S.  
VIEW AND SUPPORTING ARGUMENTATION IS SUFFICIENTLY SET  
FORTH IN PREVIOUS U.S. SUBMISSIONS.

7. IT CONTINUES TO BE THE BELIEF OF THE U.S. THAT THE  
REGULATIONS, ADMINISTRATION AND IMPLEMENTATION OF THE EC  
SCHEME ON NFDM ARE INCONSISTENT WITH ARTICLES I,II, AND  
III OF THE GATT. CHRISTOPHER

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## Message Attributes

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